



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: FFL OPC MNDCL-S

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("the *Act*") for an Order of Possession for:

- an Order of Possession for cause, pursuant to section 55;
- a monetary order for money owed or compensation for loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The tenants did not attend this hearing, although I left the teleconference hearing connection open until 11:14 a.m. in order to enable the tenants to call into this teleconference hearing scheduled for 11:30 a.m. The landlord attended the hearing with their agent LT, and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the landlord, landlord's agent, and I were the only ones who had called into this teleconference.

The landlord's agent testified that the tenants were served with the landlord's application for dispute resolution hearing package and evidence on January 20, 2020 by way of registered mail. The landlord provided the tracking information in their evidentiary materials. In accordance with sections 88, 89 and 90 of the *Act*, I find that the tenants deemed served with the landlord's application and evidence on January 25, 2020, five days after its registered mailing.

The landlord's agent provided undisputed testimony that the tenants were served with the landlord's 1 Month Notice to End Tenancy For Cause ('1 Month Notice'), with an effective date of January 31, 2020, on December 29, 2019, by way of posting to the tenants' door. In accordance with sections 88 and 90 of the *Act*, I find that the tenants

deemed served with the landlord's 1 Month Notice on January 1, 2020, 3 days after posting.

At the outset of the hearing, the landlord indicated that the tenants paid the outstanding utility bill. Accordingly, this portion of the landlord's application was cancelled.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for cause?

Is the landlord entitled to a Monetary Order for compensation and / or money owed by the tenants?

Is the landlord entitled to recover the filing fee for this application?

Background and Evidence

The landlord's agent provided undisputed testimony that this fixed-term tenancy began on July 1, 2019, with monthly rent currently set at \$1,350.00, payable on the first of every month. The tenants paid a security deposit in the amount of \$675.00, which the landlord still holds.

The landlord served the tenants with a 1 Month Notice to End Tenancy for Cause providing the following reasons:

1. the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord;
2. the tenant or a person permitted on the property by the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord;
3. the tenant has engaged in illegal activity that has, or is likely to, adversely affect the quiet enjoyment, security, safety, or physical well-being of another occupant;
4. Breach of a material term of the tenancy agreement that was not corrected within a reasonable amount of time after written notice to do so;
5. Tenant has assigned or sublet the rental unit/site without landlord's written consent.

The landlord submitted that the tenants have been sent several warning letters. Letters have been sent to the tenants about a dog barking inside his unit, as well as the tenants smoking on the property, despite the fact that the building is a smoke-free and pet-free building. The landlord submits that the tenants have ignored these warnings.

The landlord also filed an application for the following monetary orders:

Item	Cost
Filing Fee for this Application	\$100.00
Cleaning Fee	1,000.00
Unpaid Filing Fee for previous direct request proceeding	100.00
Request to keep security deposit	675.00
Total Monetary Award Requested	\$1,875.00

The landlord had previously filed an application for a direct request proceeding, and an ex parte hearing was held on January 13, 2020. The landlord is applying to recover the filing fee for both this application, as well as this previous application. The landlord is also seeking the cleaning fee for this tenancy, and permission to keep the tenants' security deposit.

Analysis

I find that the 1 Month Notice complies with the form and content provisions of section 52 of the *Act*, which states that the Notice must: be in writing and must: (a) be signed and dated by the landlord or tenant giving the notice, (b) give the address of the rental unit, (c) state the effective date of the notice, (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy, and (e) when given by a landlord, be in the approved form.

Section 47 of the *Act* provides that upon receipt of a notice to end tenancy for cause the tenants may, within ten days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. I find that the tenants have failed to file an application for dispute resolution within the ten days of service granted under section 47(4) of the *Act*. Accordingly, I find that the tenants are conclusively presumed under section 47(5) of the *Act* to have accepted that the tenancy ended on the corrected, effective date of the 1 Month Notice, February 29, 2020.

In this case, this required the tenants and anyone on the premises to vacate the premises by February 29, 2020. As this has not occurred, I find that the landlord is entitled to a two (2) day Order of Possession against the tenants, pursuant to section 55 of the *Act*.

Section 37(2)(a) of the *Act* stipulates that when a tenant vacates a rental unit the tenant must leave the rental unit reasonably clean, and undamaged condition except for reasonable wear and tear.

Section 38(1) of the *Act* requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address in writing, to either return the deposit or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain the deposit. If the landlord fails to comply with section 38(1), then the landlord may not make a claim against the deposit, and the landlord must return the tenant's security deposit plus applicable interest and must pay the tenant a monetary award equivalent to the original value of the security deposit (section 38(6) of the *Act*). With respect to the return of the security deposit, the triggering event is the latter of the end of the tenancy or the tenant's provision of the forwarding address. Section 38(4)(a) of the *Act* also allows a landlord to retain an amount from a security or pet damage deposit if "at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant."

As the tenants have yet to move out, I find that the landlord's applications to keep the security deposit and to recover the cost of cleaning to be premature. Accordingly, I dismiss these portions of the landlord's application with leave to reapply.

The landlord also applied to recover the cost of the filing fee for a previous application. In the decision dated January 13, 2020, the adjudicator stated the following: "*I dismiss the landlord's application to recover the filing fee paid for this application without leave to reapply.*" The landlord's application to recover the filing fee for that application was already considered, and dismissed without leave to reapply. This is therefore a second application to recover the same filing fee. I therefore find that this current application is *res judicata* meaning the matter has already been conclusively decided and cannot be decided again. Accordingly, I dismiss the landlord's application to recover this filing fee again without leave to reapply.

As the landlord was partially successful in this application, I also allow the landlord to recover half of the filing fee for this application. The landlord continues to hold the tenants' security deposit of \$675.00. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain \$50.00 of the tenants' security deposit in satisfaction of the monetary award for this application.

Conclusion

I find that the landlord's 1 Month Notice is valid and effective as of February 29, 2020. I grant an Order of Possession to the landlord effective two **days after service of this Order** on the tenant. Should the tenants fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I allow the landlord to recover half of the filing fee for this application. I order the landlord to retain \$50.00 of the tenants' security deposit in satisfaction of the monetary claim.

I dismiss the landlord's application to recover the filing fee for the previous application without leave to reapply.

I dismiss the remainder of landlord's application with leave to reapply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: March 20, 2020

Residential Tenancy Branch